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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

RICHARD HOWARD,

Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES,

Defendant and Respondent.

B282538

(Los Angeles County  
Super. Ct. No. BC526992)

APPEAL from a judgment of the Superior Court of the  
County of Los Angeles, Kim G. Dunning, Judge. Affirmed.

Law Offices of Ron Bochner, Ron Bochner, for Plaintiff and  
Appellant.

Hurrell Cantrall, Thomas C. Hurrell and Melinda Cantrall,  
for Defendant and Respondent.

## I. INTRODUCTION

Plaintiff Richard Howard appeals from a judgment following the entry of an order sustaining the demurrer of defendant the County of Los Angeles (the County) to the second amended complaint without leave to amend. Plaintiff challenges each of the alternative grounds upon which the trial court based its order, including the trial court's conclusion that his complaint was barred by the litigation privilege set forth in Civil Code section 47, subdivision (b) (section 47(b)). He also contends the trial court abused its discretion by denying his motion for leave to amend to state a cause of action under 42 U.S.C. section 1983 (section 1983).

We hold that the trial court correctly concluded the section 47(b) litigation privilege barred each of the claims asserted in plaintiff's operative complaint. We also conclude the trial court did not abuse its discretion in denying plaintiff leave to amend. We therefore affirm the judgment.

## II. FACTUAL BACKGROUND

According to the factual allegations in the second amended complaint, which we accept as true (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6), the County "contracts with red[-]light camera operators to implement, and collection agencies and courts to enforce, red[-]light camera [traffic] tickets." The County contracted with, among others, GC Services to perform on its behalf such collection services.

On December 6, 2007, a notice to appear on citation number C144793, on Judicial Council Form TR-115, was sent to

plaintiff at an address on Avalon Boulevard, in Los Angeles, California.<sup>1</sup> The notice advised, “You have been issued a citation that charges you with a traffic infraction.” It listed the date of violation as December 6, 2007, and ordered plaintiff to appear on January 10, 2008, at the Santa Monica courthouse. Plaintiff never received the notice.

On February 8, 2008, the Los Angeles Superior Court mailed a civil assessment notice to plaintiff at the address on Avalon Boulevard. The notice stated, “As a result of your failure to appear on January 10, 2008 a civil assessment fee of \$300.00 was added to your bail, pursuant to Penal Code Section 1214.1. [¶] However, if you pay in full within 10 calendar days of the above date of this letter, you may deduct \$300.00 from the bail amount and you do not need to appear in [c]ourt . . . . If bail is not received, the Court will refer this citation to a collection agency.”

On July 12, 2010, GC Services sent plaintiff a letter (collection letter). The collection letter was sent to plaintiff’s correct address, in Concord, California. At the top right-hand portion of the letter, the words “Superior Court of California, County of Los Angeles Santa Monica Courthouse” appeared above the statement, “Balance Due \* \$680.” The first line of the letter advised “MAY INCLUDE MULTIPLE CITATIONS.” The body of the letter stated, in pertinent part: “Your failure to respond to previous notifications may result in the Los Angeles Superior Court obtaining a civil money judgment against you. [¶] The State of California’s Department of Motor Vehicles [(DMV)]

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<sup>1</sup> On July 13, 2018, we granted the County’s request to take judicial notice of the notice to appear and the February 8, 2008, civil assessment notice.

is assisting us in locating you. [¶] . . . By contacting us at this time to resolve your unpaid bail, you will avoid further methods of collection which may include pursuing a civil money judgment resulting in: GARNISH[MENT OF] YOUR WAGES OR OTHER SOURCES OF INCOME [¶] ATTACHING YOUR BANK ACCOUNT [¶] FILING A LIEN WHICH WILL ATTACH TO ALL REAL PROPERTY YOU NOW OWN OR LATER WILL ACQUIRE IN CALIFORNIA [¶] ALL OTHER LAWFUL PROCESSES.” The letter also requested “payment in full . . . .”

Plaintiff had not received any prior notifications relating to the traffic citation referenced in the collection letter or the notice to appear in court, and had not been served with a complaint. In response to the letter, on or about July 13, 2010, plaintiff telephoned GC Services to inquire about the balance due referenced in the letter. A GC Services representative explained that plaintiff had been captured by camera and cited for running a red light in Southern California. According to the representative, the photograph from the red-light camera showed the vehicle that allegedly ran the red light and its license plate number. Plaintiff explained to the representative that he had not been in Southern California since 1999, had not received a traffic citation there, and did not own or ever drive a vehicle matching the identifying features of the vehicle depicted in the photograph.

On or about July 13, 2010, plaintiff contacted the DMV and inquired about the traffic citation. He told the DMV representative he had not received any citation, notice to appear in court, or judgment related to the red-light camera citation. Similarly, the DMV had not made registration of his vehicle contingent upon payment of any such citation and had not placed

points on his driving record. The DMV could not resolve the issue.

On July 20, 2010, plaintiff's attorney sent a certified letter to GC Services setting forth the facts stated above. GC Services did not respond to that letter.

Plaintiff suspected that the collection letter from GC Services was the result of an identity thief registering a vehicle using plaintiff's identifying information. Among other things, the collection letter was sent to an address where plaintiff had never resided. In addition, the red-light photograph upon which the collection letter was based showed a young African-American male driving the vehicle that purportedly ran the light; plaintiff, however, was an elderly white male.

Plaintiff discovered that the County had a policy that persons cited based on red-light camera technology who failed to appear would not be subject to a default judgment or otherwise subjected to the types of enforcement actions referenced in the collection letter because they were not subject to the County's jurisdiction. Pursuant to that policy, persons cited by red-light camera technology could be requested to appear voluntarily, but no obligation would be imposed by the court to either appear or pay such citations. This policy was allegedly set forth in certain exhibits attached to the second amended complaint.

According to plaintiff, this policy constituted "a mandate that there be no suggestion of [an] obligation on the part of [persons cited by the red-light camera methodology] and . . . guidelines [had] been developed to assure that no such obligation [would] be imposed." "[P]olicies and procedures [were] in place that [prohibited] default judgments and therefore related liens,

garnishment[s], levies or other . . . collection activity.” In addition, such citations were not reported to the DMV.

In July 2012, GC Services informed plaintiff that, pursuant to the forgoing policies, the County had assumed an obligation to review and approve collection letters before GC Services sent them to traffic violators. But, based on information provided by GC Services, the County had not reviewed or approved any such letters.

As a result of the County’s acts and omissions, plaintiff was “compelled to contact [the County], the DMV and an attorney about these matter[s] and had to pay an attorney for assistance in drafting a letter regarding these baseless accusations and was compelled to sue GC Services and incur fees and costs.” He also suffered emotional distress.

### **III. PROCEDURAL BACKGROUND**

Plaintiff filed his original class action complaint in this action on November 7, 2013. In response to the County’s demurrer, plaintiff filed a first amended class action complaint on March 12, 2014. On May 14, 2014, the County filed a second demurrer. On May 14, 2014, after hearing oral argument, the trial court entered an order sustaining the County’s demurrer with leave to amend.

Plaintiff filed the operative second amended class action complaint on June 30, 2014. The complaint asserted five causes of action on behalf of plaintiff, individually, and all other persons similarly situated, for: (1) declaratory relief; (2) negligence of government employee pursuant to Government Code sections 815.2 and 815.4; (3) breach of mandatory duties pursuant to

Government Code section 815.6; (4) fraud of government contractor pursuant to Government Code section 815.4; and (5) breach of contract pursuant to Government Code section 814. Each of plaintiff's causes of action was based on the operative facts set forth above.

On August 1, 2014, the County responded to the second amended complaint by filing its third demurrer. On August 22, 2016, plaintiff refiled a motion for leave to amend his complaint, which motion had been previously denied on procedural grounds. The County opposed the motion for leave, and filed a request for judicial notice of an order from a related action denying plaintiff's motion to certify the class and the Court of Appeal's opinion affirming the order.

The County's demurrer and plaintiff's motion for leave came on for hearing on February 15, 2017. At the hearing, the trial court orally pronounced its ruling sustaining the demurrer without leave to amend and denying plaintiff's motion for leave as moot.

On March 14, 2017, the trial court issued a formal order sustaining the County's demurrer to the second amended complaint without leave to amend. Among other grounds, the trial court ruled that plaintiff's complaint was barred by the section 47(b) litigation privilege. On March 17, 2017, the trial court entered a judgment dismissing the complaint. Plaintiff filed a timely notice of appeal on May 10, 2017.

## IV. DISCUSSION

### A. *Standard of Review*

“In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.’ (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591 . . . .) Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. (*Speegle v. Board of Fire Underwriters* (1946) 29 Cal.2d 34, 42 . . . .) When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. (See *Hill v. Miller* (1966) 64 Cal.2d 757, 759 . . . .) And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. (*Kilgore v. Younger* (1982) 30 Cal.3d 770, 781 . . . ; *Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 636 . . . .) The burden of proving such reasonable possibility is squarely on the plaintiff. (*Cooper v. Leslie Salt Co., supra*, [70 Cal.2d] at p. 636.)” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

## B. *Section 47(b) Litigation Privilege*

### 1. Legal Principles

“The litigation privilege, codified at [section 47(b)], provides that a ‘publication or broadcast’ made as part of a ‘judicial proceeding’ is privileged. This privilege is absolute in nature, applying ‘to *all* publications, irrespective of their maliciousness.’ (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 216 . . . . (*Silberg*).) ‘The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that [has] some connection or logical relation to the action.’ (*Id.* at p. 212.) The privilege ‘is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057 . . . . (*Rusheen*).) [¶] ‘The principal purpose of [the litigation privilege] is to afford litigants and witnesses [citation] the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions. [Citations.]’ (*Silberg, supra*, 50 Cal.3d at p. 213.)” (*Action Apartments Ass’n, Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241.)

In *Rusheen, supra*, 37 Cal.4th 1048, the defendant in a civil action filed a cross-complaint against the plaintiff’s attorney for abuse of process, alleging that the attorney had made an illegal vexatious litigant motion against the defendant, failed to serve the complaint properly, took an improper default judgment against the defendant, permitted his client to execute on the judgment, and filed false declarations of service. (*Id.* at p. 1049.)

The trial court granted the attorney's special motion to strike the cross-complaint under Code of Civil Procedure section 425.16 on the ground that the attorney's conduct as alleged in the cross-complaint was privileged under section 47(b). (*Ibid.*)

The Supreme Court in *Rusheen, supra*, 37 Cal.4th 1048, granted review to determine whether (1) actions taken to collect a judgment, such as obtaining a writ of execution and levying on the judgment debtor's property, are protected by the litigation privilege as communications in the course of a judicial proceeding; and (2) a claim for abuse of process based on the filing of an allegedly false declaration of service was barred by the litigation privilege on the ground the claim is necessarily founded on a communicative act. (*Id.* at p. 1055.) The court concluded that "where the cause of action is based on a communicative act, the litigation privilege extends to those noncommunicative actions which are necessarily related to that communicative act . . . . [B]ecause the claim for abuse of process was based on the communicative act of filing allegedly false declarations of service to obtain a default judgment, the postjudgment enforcement efforts, including the application for writ of execution and act of levying on property, were protected by the privilege." (*Id.* at p. 1052.)

In reaching its conclusion, the court in *Rusheen, supra*, 37 Cal.4th 1048, explained that the issue of whether the privilege applied turned on whether the gravamen of the action was based on privileged communicative conduct. The court determined that "[o]n close analysis, the gravamen of the action was not the levying act, but the procurement of the judgment based on the use of allegedly perjured declarations of service. Because these declarations were communications '(1) made in judicial or quasi-

judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action’ (*Silberg, supra*, 50 Cal.3d at p. 212), the litigation privilege applies to the declarations and protects against torts arising from the privileged declarations. (*Id.* at p. 214.)” (*Id.* at p. 1062.)

According to the court in *Rusheen, supra*, 37 Cal.4th 1048, “[e]xtending the litigation privilege to postjudgment enforcement activities that are necessarily related to the allegedly wrongful communicative act is consistent with public policy considerations. The purposes of section 47[(b)], are to afford litigants and witnesses free access to the courts without fear of being harassed subsequently by derivative tort actions, to encourage open channels of communication and zealous advocacy, to promote complete and truthful testimony, to give finality to judgments, and to avoid unending litigation (*Silberg, supra*, 50 Cal.3d at pp. 213-214.) To effectuate these purposes, the litigation privilege is absolute and applies regardless of malice. (*Id.* at pp. 215-216.) Moreover, ‘[i]n furtherance of the public policy purposes it is designed to serve, the privilege prescribed by [former] section 47(2) has been given broad application.’ (*Id.* at p. 211.)” (*Id.* at p. 1063.)

## 2. Analysis

Here, the gravamen of each of plaintiff’s claims is the communicative act by the County’s agent, GC Services, of sending the collection letter in an effort to collect on a red-light camera traffic citation that had issued, but had not yet been reduced to a judgment or otherwise levied upon. The collection letter was sent

in furtherance of an ongoing judicial proceeding, namely, the traffic citation proceeding that commenced with the mailing of the notice to appear. (See Vehicle Code, section 40518, subd. (a) [“Whenever a written notice to appear has been issued by a peace officer or by a qualified employee of a law enforcement agency on a form approved by the Judicial Council . . . based on an alleged violation of section 21453 . . . [or] recorded by an automated traffic enforcement system . . . [and certain requirements are met] . . . an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint”].) It is thus the type of communicative act that the litigation privilege was designed to protect.

That GC Services sent the collection letter prior to the filing of a judgment does not change the analysis. Although the letters thus differ from the declarations of service in *Rusheen*, *supra*, 37 Cal.4th 1048, which were filed as part of a postjudgment collection effort, they were nevertheless communicative acts sufficiently connected to the traffic citation proceeding against an alleged traffic violator to fall under the protection of the privilege. And, the fact that the collection letter was allegedly sent in violation of County policy does not alter this conclusion, as the privilege extends to communications in furtherance of litigation that may be false or misleading, such as, for example, the allegedly false declarations of service at issue in *Rusheen*. Similarly, the fact that plaintiff was not the traffic violator, but a victim of identity theft, does not alter the privilege analysis. Regardless of whether the collection letter was sent to plaintiff in error, it forms the basis for his individual and class claims against the County and was sent as part of a collection process directly connected to the County’s red-light camera

citation procedure. Therefore, erroneous or not, it was a communicative act in furtherance of litigation that was presumptively protected by the privilege.

Contending that he and the class members were third-party beneficiaries of the contract between GC Services and the County, plaintiff argues that the section 47(b) privilege does not apply to his breach of contract claim. Citing, among other cases, *Wentland v. Wass* (2005) 126 Cal.App.4th 1484, plaintiff argues that his contract claim is not subject to the bar of the privilege because application of the privilege to that claim would not further the policies underlying it.

In *Vivian v. Labrucherie* (2013) 214 Cal.App.4th 267 (*Vivian*), the court surveyed the relevant case law explaining the circumstances under which the section 47(b) privilege operates to bar contract claims. According to the court in *Vivian, supra*, 214 Cal.App.4th 247, the determination of whether the section 47(b) privilege applies to contract actions “requires careful consideration of at least three decisions: [*Navellier v. Sletten* (2002) 29 Cal.4th 82 (*Navellier I*)], [*Navellier v. Sletten* (2003) 106 Cal.App.4th 763 (*Navellier II*)], and *Wentland v. Wass*, [*supra*,] 126 Cal.App.4th 1484 . . . .” (*Id.* at p. 275.) Following a detailed analysis of the holdings in each of those three cases, the court in *Vivian, supra*, 214 Cal.App.4th 267 concluded that “[a]s these cases indicate, the litigation privilege does not necessarily bar liability for breach of contract claims. Application of the privilege requires consideration of whether doing so would further the policies underlying the privilege.” (*Id.* at p. 276.)

Contrary to plaintiff’s assertion, the contract between GC Services and the County, whereby GC Services agreed to collect debt for the County and which allegedly imposed upon the

County a duty to review and approve collection letters prior to mailing, is not the type of contract that California courts have held to be outside the scope of the litigation privilege, e.g., releases or waivers of claims and confidentiality agreements. Under the applicable authorities, the privilege does not extend to those types of contracts because to do so would not further the policies underlying the privilege, i.e., it would not advance or promote the right of litigants and witnesses to have free access to the courts without fear of being harassed subsequently by derivative actions. Unlike a release or confidentiality agreement, each of which operates as an implied waiver of the privilege, the purpose of the provision at issue in this case—to ensure compliance with the County’s policies and procedures regarding the processing of red-light traffic tickets—would not be frustrated by applying the privilege to bar plaintiff’s breach of contract claim. To the contrary, permitting plaintiff to sue for receipt of a letter sent in connection with a traffic citation proceeding would undermine the purpose of the litigation privilege, that is, the ability of the County to cite and fine traffic violators. We find no compelling reason to exclude the County’s contract with GC Services from the bar of the privilege.

For similar reasons, plaintiff’s declaratory relief claim cannot be excluded from the reach of the privilege. In that claim, plaintiff seeks a declaration that the County has “a duty to review [GC Services’ collection letters] and assure that they comply with law, policies and procedures,” i.e., plaintiff seeks a declaration that the County has a duty to comply with its contractual obligation to review and approve such letters. Because the duty underlying plaintiff’s claim for declaratory relief is identical to the duty upon which plaintiff’s breach of

contract claim is based, it is barred by the privilege for the same reasons the contract claim is barred.

We further conclude that plaintiff's statutory duty claims also are barred by the privilege because it is the gravamen of the cause of action, rather than its designation, that is controlling. As the Supreme Court in *Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948 (*Jacob B.*) explained, "If the policies underlying section 47(b) are sufficiently strong to support an absolute privilege, the resulting immunity should not evaporate merely because the plaintiff discovers a conveniently different label for pleading what is in substance an identical grievance arising from identical conduct as that protected by section 47(b)." (*Rubin v. Green* [(1993)] 4 Cal.4th [1187,] 1203.) Section 47(b)'s litigation privilege bars a privacy cause of action whether labeled as based on common law, statute, or Constitution." (*Id.* at p. 962.) In this case, the grievance underlying the statutory duty claims is, in substance, identical to the grievance underlying plaintiff's contract-based and declaratory relief claims—a breach by the County of an alleged duty to review and approve collection letters issued in connection with red-light traffic ticket proceedings. Thus, regardless of the statutory label plaintiff has chosen for those claims, they are equally subject to the policies underlying the litigation privilege.

Finally, we reject plaintiff's assertion that the gravamen of his claims is noncommunicative conduct—the County's alleged failure to review and approve collection letters—which is not subject to the litigation privilege. As the court observed in *Jacob B.*, *supra*, 40 Cal.4th 948, "if the gravamen of the action is communicative, the litigation privilege extends to noncommunicative acts that are necessarily related to the

communicative conduct . . . . Stated another way, unless it is demonstrated that an independent, noncommunicative, wrongful act was the gravamen of the action, the litigation privilege applies.’ (*Rusheen, supra*, [37 Cal.4th] at p. 1065.)” (*Id.* at p. 957.) As explained above, each of plaintiff’s claims is based upon the collection letter plaintiff received from GC Services which allegedly breached the County’s underlying duty to review and approve such letters. Because the County’s alleged wrongful conduct in failing to preapprove the letter is “necessarily related” to the communicative act of sending it out unapproved, the litigation privilege extends to that alleged conduct as well.

C. *Leave to Amend*

Plaintiff contends that even assuming the trial court correctly sustained the demurrer, it abused its discretion when it denied his motion for leave to amend the complaint. According to plaintiff, based on the facts alleged in the second amended complaint, he could have stated a cause of action for violation of his constitutional due process rights under section 1983.

We will assume that the litigation privilege conferred by section 47(b) does not apply to section 1983 claims. (*See, e.g. Martinez v. California* (1980) 444 U.S. 277, 284; *Kimes v. Stone* (9th Cir. 1996) 84 F.3d 1121, 1127.) We therefore will proceed to analyze whether plaintiff satisfied his burden of showing there was a reasonable probability he could amend to state a viable section 1983 claim.

“To state a claim under [section] 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged

deprivation was committed by a person acting under color of state law.’ (*West v. Atkins* (1988) 487 U.S. 42, 48 . . . .)” (*Arce v. Childrens Hospital Los Angeles* (2012) 211 Cal.App.4th 1455, 1472.)

In his draft third amended complaint, attached to his motion for leave to amend, plaintiff alleged that the County deprived him of his “right of due process and the [prohibition against] imposition of excessive penalties as guaranteed through the Fifth and Fourteenth Amendment and equal protection under the Fourteenth Amendment of the United States Constitution.” Although we assume factual allegations to be true, we do not assume the truth of contentions, deductions or conclusions of law. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.) Plaintiff’s draft complaint includes no allegations of fact that explain *how* the County’s failure to review the collection letter deprived him of his constitutional rights.

In his reply brief, plaintiff argues that the County deprived him of his constitutional rights by “taking a default and imposing fines without personally serving him with anything[,] . . . [imposing] the various ‘amounts due’ . . . on him without hearing[,] . . . the amount sought as bail was excessive[,] . . . [and imposing an unjustified] \$300 failure to appear fine was not justified.” As an initial matter, arguments raised for the first time in a reply are untimely and may be disregarded. (*Worldmark, The Club v. Wyndham Resort Development Corp.* (2010) 187 Cal.App.4th 1017, 1030, fn. 7.) In any event, the theory advanced by plaintiff in his reply is inconsistent with the theory advanced in his second amended complaint, that plaintiff did not appear in court (and thus would not be subject to bail), no judgment had been entered against him, and it was the policy of

the Los Angeles Superior Court not to impose a fine. “Under the sham pleading doctrine, plaintiffs are precluded from amending complaints to omit harmful allegations, without explanation, from previous complaints to avoid attacks raised in demurrers or motions for summary judgment. (See *Hendy v. Losse* (1991) 54 Cal.3d 723, 742-743 . . . [affirming an order sustaining defendants’ demurrer without leave to amend when the plaintiff filed an amended complaint omitting harmful allegations from the original unverified complaint]; see also *Colapinto v. County of Riverside* (1991) 230 Cal.App.3d 147, 151 . . . (*Colapinto*) [‘If a party files an amended complaint and attempts to avoid the defects of the original complaint by either omitting facts which made the previous complaint defective or by adding facts inconsistent with those of previous pleadings, the court may take judicial notice of prior pleadings and may disregard any inconsistent allegations.’]) A noted commentator has explained, ‘Allegations in the original pleading that rendered it vulnerable to demurrer or other attack cannot simply be omitted without explanation in the amended pleading. The policy against sham pleadings requires the pleader to *explain* satisfactorily any such omission.’ (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2005) ¶ 6.708, p. 6-142.1.)” (*Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 425-426.) The civil rights allegations described in plaintiff’s reply brief were inconsistent with the allegations in plaintiff’s earlier complaints, and violated the sham pleading rule. Plaintiff thus cannot demonstrate that the trial court abused its discretion in denying him leave to amend his complaint to add a federal civil rights claim.

## V. DISPOSITION

The judgment is affirmed. In the interests of justice, each party is to bear its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM, J.

We concur:

BAKER, Acting P. J.

MOOR, J